

husband executed and delivered to National Remodeling an installment note in the amount of \$24,082.00 for a property improvement loan that was insured against nonpayment by the Secretary pursuant to Title I of the National Housing Act, 12 U.S.C. § 1703. (Secretary's Statement hereinafter "Secy. Stat.", unmarked Exh.). Thereafter, National Remodeling assigned the note to Remodelers National Funding Corp. Id. Petitioner subsequently defaulted on the note. Consequently, Remodelers National Funding Corp. assigned the note to the United States of America in accordance with 24 C.F.R. § 201.54, and certain specified amounts in unpaid principal and interest are now due. (Declaration of Lester J. West dated October 1, 2002, hereinafter "West Declaration").

The Secretary has filed a Statement and documentary evidence in support of his position that Petitioner is indebted to the Department in a specific amount. Petitioner does not dispute the existence or the amount of the debt. Further, Petitioner does not deny that the debt is delinquent. Rather, Petitioner alleges that the discharge of her husband in bankruptcy renders the debt claimed by the Secretary unenforceable against her. (Petitioner's Letter dated September 1, 2003, hereinafter "Pet. Ltr."). In support of this contention, Petitioner alleges that her husband was adjudged "Totally Bankrupt" in February of 1991. Id. Petitioner further alleges that she was not a party to her husband's bankruptcy proceeding due to "bad legal advice" although she was "equally and totally bankrupt." (Secy. Stat., Exh. A). As co-signer of the note with her husband, Petitioner is jointly liable for amounts owed under the note's terms. (Secy. Stat., unmarked Exh.). Moreover, the discharge in bankruptcy of Petitioner's husband does not relieve Petitioner from her joint and several obligations under the note. Mary Jane Lyons Hardy, HUDBCA No. 87-1982-G314 at 3 (July 15, 1987). Because Petitioner was not a party to her spouse's discharge in bankruptcy, Petitioner is liable for the debt as a co-signor of the note. I find that Petitioner liable for the debt as co-signor of the note. Lori J. Walker Klemanski, HUDBCA No. 87-1876-G209 (December 23, 1986).

Next, Petitioner asserts that she will face significant financial and physical hardship if she is forced to repay this debt. However, this Board must determine whether, as a matter of law, this debt is legally enforceable against Petitioner. Unfortunately, evidence of hardship, no matter how compelling, cannot be taken into consideration in determining whether the debt is legally enforceable. Anna Filiziana, HUDBCA No. 95-A-NY-T11 (May 21, 1996).

If Petitioner wishes to negotiate repayment terms with the Department, Petitioner may want to discuss this matter with Lester J. West, Director, HUD Albany Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121. His telephone number is 1-800-699-5152, extension 4206. A review of Petitioner's financial status may be conducted if Petitioner submits to that HUD Office a Title I Financial Statement (HUD Form 56142).

The Secretary has filed documentary evidence that a Notice of Intent to Offset IRS Tax Refund dated August 4, 1995, was sent to Petitioner at 6632 S. Utica Place, Tulsa, OK 74136. (West Declaration Exh. A). The Secretary has also submitted the unrebutted Declaration of Lester J. West, which in part states that Petitioner responded to the Notice of Intent to Offset IRS Tax Refund by letter dated August 14, 1995, which identified her return address as 6632 S. Utica Place, Tulsa, OK 74136 and included a copy of the Notice of Intent to Offset IRS Tax Refund as an enclosure. (West Declaration at 5). Lester J. West states in his unrebutted Supplemental

Declaration that the HUD claim file contains no evidence of an address change for the Petitioner between August 4, 1995 and April 22, 1997. A Treasury Offset Program Notice [TOP(A)LTR], dated April 22, 1997, was sent to Petitioner at 6632 S. Utica Place, Tulsa, OK 74136 and there is no evidence in the file to indicate that the notice was returned. Finally, Lester J. West represents in his Supplemental Declaration that the HUD claim file includes no other record of Petitioner's address other than the address used on the Notices of Intent to Offset IRS Refund that the Department mailed to Petitioner. (Supplemental Declaration of Lester J. West dated December 13, 2002).

Petitioner has failed to file, as ordered on December 4, 2002, the sworn statement setting forth facts in support of her allegations. The record is devoid of any evidence that the address the Department used was legally defective for the purpose of notifying Petitioner of the Secretary's intent to seek administrative offset of Petitioner's Federal income tax refund. Therefore, in view of the evidence submitted by the Secretary and Petitioner's failure to file documentary evidence to substantiate her position, I find the address used by the Department to be legally sufficient for the purpose of processing the administrative offset of Petitioner's Federal income tax refund.

ORDER

There being no evidence to the contrary, I find that the debt which is the subject of this proceeding is legally enforceable against Petitioner in the amount claimed by the Secretary. The Order imposing the stay of referral of this matter to the IRS or to the U.S. Department of Treasury for administrative offset is vacated.

It is hereby **ORDERED** that the Secretary is authorized to seek collection of this outstanding obligation by means of administrative offset of any eligible Federal payments due to Petitioner.

Jerome Drummond
Administrative Judge

July 11, 2003